

Todd M. Friedman (SBN 216752)
Suren N. Weerasuriya (SBN 278521)
Adrian R. Bacon (SBN 280332)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
324 S. Beverly Dr., #725
Beverly Hills, CA 90212
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@attorneysforconsumers.com
sweerasuriya@attorneysforconsumers.com
abacon@attorneysforconsumers.com
Attorneys for Plaintiff

Additional Attorneys on Signature Page

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TENLEY HARDIN, individually and) Case No.
on behalf of all others similarly situated,)

Plaintiff,

vs.

MERCHANTS CAPITAL SERVICES,)
Defendant.)

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]

DEMAND FOR JURY TRIAL

Plaintiff Tenley Hardin ("Plaintiff"), individually and on behalf of all
others similarly situated, alleges the following upon information and belief based

upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Merchants Capital Services (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company with its principal place of business and State of Incorporation in Florida state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendant does business within the state of California and in the county of Los Angeles.

PARTIES

4. Plaintiff, Tenley Hardin (“Plaintiff”), is a natural person residing in Venice, California and is a “person” as defined by 47 U.S.C. § 153 (10).

5. Defendant, Merchants Capital Services (“Defendant”), is “one the nation’s leading merchant cash advance providers for small to medium sized

businesses” and is a “person” as defined by *47 U.S.C. § 153 (10)*.

FACTUAL ALLEGATIONS

6. Beginning in and around January of 2015, Defendant contacted Plaintiff on her cellular telephone number ending in -2480, in an attempt to solicit its services as a small business lender.

7. Defendant used an “automatic telephone dialing system”, as defined by *47 U.S.C. § 227(a)(1)* to place its calls to Plaintiff attempting to solicit its services as a small business lender.

8. Defendant’s calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

9. Defendant’s calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

10. At no time did Defendant possess Plaintiff’s “prior express consent” to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

CLASS ALLEGATIONS

11. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereafter “The Class”) defined as follows:

All persons within the United States who received any collection telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

12. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any collection telephone calls from

1 Defendant to said person's cellular telephone made through the use of any
2 automatic telephone dialing system or an artificial or prerecorded voice and such
3 person had not previously not provided their cellular telephone number to
4 Defendant within the four years prior to the filing of this Complaint.

5 13. Defendant, its employees and agents are excluded from The Class.
6 Plaintiff does not know the number of members in The Class, but believes the
7 Class members number in the thousands, if not more. Thus, this matter should be
8 certified as a Class Action to assist in the expeditious litigation of the matter.

9 14. The Class is so numerous that the individual joinder of all of its
10 members is impractical. While the exact number and identities of The Class
11 members are unknown to Plaintiff at this time and can only be ascertained
12 through appropriate discovery, Plaintiff is informed and believes and thereon
13 alleges that The Class includes thousands of members. Plaintiff alleges that The
14 Class members may be ascertained by the records maintained by Defendant.

15 15. Plaintiff and members of The Class were harmed by the acts of
16 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
17 and Class members via their cellular telephones thereby causing Plaintiff and
18 Class members to incur certain charges or reduced telephone time for which
19 Plaintiff and Class members had previously paid by having to retrieve or
20 administer messages left by Defendant during those illegal calls, and invading the
21 privacy of said Plaintiff and Class members.

22 16. Common questions of fact and law exist as to all members of The
23 Class which predominate over any questions affecting only individual members
24 of The Class. These common legal and factual questions, which do not vary
25 between Class members, and which may be determined without reference to the
26 individual circumstances of any Class members, include, but are not limited to,
27 the following:

28 a. Whether, within the four years prior to the filing of this

1 Complaint, Defendant made any solicitation or marketing call
2 (other than a call made for emergency purposes or made with
3 the prior express consent of the called party) to a Class
4 member using any automatic telephone dialing system or any
5 artificial or prerecorded voice to any telephone number
6 assigned to a cellular telephone service;

7 b. Whether Plaintiff and the Class members were damages
8 thereby, and the extent of damages for such violation; and

9 c. Whether Defendant should be enjoined from engaging in such
10 conduct in the future.

11 17. As a person that received numerous solicitation or marketing calls
12 from Defendant using an automatic telephone dialing system or an artificial or
13 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
14 claims that are typical of The Class.

15 18. Plaintiff will fairly and adequately protect the interests of the
16 members of The Class. Plaintiff has retained attorneys experienced in the
17 prosecution of class actions.

18 19. A class action is superior to other available methods of fair and
19 efficient adjudication of this controversy, since individual litigation of the claims
20 of all Class members is impracticable. Even if every Class member could afford
21 individual litigation, the court system could not. It would be unduly burdensome
22 to the courts in which individual litigation of numerous issues would proceed.
23 Individualized litigation would also present the potential for varying, inconsistent,
24 or contradictory judgments and would magnify the delay and expense to all
25 parties and to the court system resulting from multiple trials of the same complex
26 factual issues. By contrast, the conduct of this action as a class action presents
27 fewer management difficulties, conserves the resources of the parties and of the
28 court system, and protects the rights of each Class member.

1 20. The prosecution of separate actions by individual Class members
2 would create a risk of adjudications with respect to them that would, as a practical
3 matter, be dispositive of the interests of the other Class members not parties to
4 such adjudications or that would substantially impair or impede the ability of such
5 non-party Class members to protect their interests.

6 21. Defendant has acted or refused to act in respects generally applicable
7 to The Class, thereby making appropriate final and injunctive relief with regard to
8 the members of the California Class as a whole.

9 **FIRST CAUSE OF ACTION**

10 **Negligent Violations of the Telephone Consumer Protection Act**

11 **47 U.S.C. §227 et seq.**

12 22. Plaintiff repeats and incorporates by reference into this cause of
13 action the allegations set forth above at Paragraphs 1-22.

14 23. The foregoing acts and omissions of Defendant constitute numerous
15 and multiple negligent violations of the TCPA, including but not limited to each
16 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

17 24. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
18 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in
19 statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
20 *227(b)(3)(B)*.

21 25. Plaintiff and the Class members are also entitled to and seek
22 injunctive relief prohibiting such conduct in the future.

23 **SECOND CAUSE OF ACTION**

24 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
25 **Act**

26 **47 U.S.C. §227 et seq.**

27 26. Plaintiff repeats and incorporates by reference into this cause of
28 action the allegations set forth above at Paragraphs 1-25.

1 27. The foregoing acts and omissions of Defendant constitute numerous
2 and multiple knowing and/or willful violations of the TCPA, including but not
3 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
4 *seq.*

5 28. As a result of Defendant's knowing and/or willful violations of *47*
6 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
7 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
8 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

9 29. Plaintiff and the Class members are also entitled to and seek
10 injunctive relief prohibiting such conduct in the future.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

13 **FIRST CAUSE OF ACTION**

14 **Negligent Violations of the Telephone Consumer Protection Act**

15 **47 U.S.C. §227 et seq.**

- 16 • As a result of Defendant's negligent violations of *47 U.S.C.*
17 *§227(b)(1)*, Plaintiff and the Class members are entitled to and
18 request \$500 in statutory damages, for each and every violation,
19 pursuant to *47 U.S.C. 227(b)(3)(B)*.
20 • Any and all other relief that the Court deems just and proper.

21 **SECOND CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
23 **Act**

24 **47 U.S.C. §227 et seq.**

- 25 • As a result of Defendant's willful and/or knowing violations of *47*
26 *U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to
27 and request treble damages, as provided by statute, up to \$1,500, for
28 each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and

1 47 U.S.C. §227(b)(3)(C).

- 2 • Any and all other relief that the Court deems just and proper.

3
4 Respectfully Submitted this 17th day of March, 2015.

5
6 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

7
8 By: /s/ Todd M. Friedman
9 Todd M. Friedman
10 Law Offices of Todd M. Friedman
11 Attorney for Plaintiff

12 John Kristensen (SBN 224132)
13 john@kristensenlaw.com
14 KRISTENSEN WEISBERG, LLP
15 12304 Santa Monica Blvd., Ste. 100
16 Los Angeles, Ca 90025
17 Telephone: (310) 507-7924
18
19
20
21
22
23
24
25
26
27
28